

REMARKS/ARGUMENTS

Claims 48-65 stand in the present application, claims 48 and 57 having been amended. Reconsideration and favorable action is respectfully requested in view of the above amendments and the following remarks.

In the Office Action, the Examiner has objected to the specification as containing a typographical error. As noted above, Applicants have corrected the deficiency pointed out by the Examiner and accordingly the Examiner's objection to the specification is believed to be overcome.

The Examiner has rejected claims 48-53, 57 and 59-62 under 35 U.S.C. § 102(e) as being anticipated by Rollins and has rejected claims 54-56 and 63-65 under 35 U.S.C. § 103(a) as being unpatentable over Rollins in view of Kitze. Applicants respectfully traverse the Examiner's §§ 102 and 103 rejections of the claims.

In the Office Action the Examiner has construed the term "application" to be the network service provider's (ISP's) own platform in Rollins, i.e., the network provider subsystem (column 2 lines 23-33), which responds to requests for extra bandwidth. See, Office Action at page 3. To more clearly distinguish their invention over Rollins Applicants have amended independent claims 48 and 57.

For example, amended independent claim 48 now more clearly requires that: (1) the "specified application" is a data-delivery-on-request application; and (2) the billing process identifies and records which high-bandwidth users are using the specified data-delivery application, thereby allowing billing according to which applications the user is accessing. Independent claim 57 was amended to more clearly

require that the "specified application" is a data-delivery-on-request application, but already required the limitation (added to independent claim 48) that "such calls are charged by the billing engine at different rates according to whether those connections make use of that application."

Contrary to the Examiner's assertion in paragraph 12 of the Office Action, Rollins does not disclose the idea of charging different rates according to the application used by the connection. The cited passage of Rollins (column 2, lines 59-65) merely charges different rates according to the bandwidth used. Applicants' inventions go further than that, and charge different rates for different applications using the same bandwidth. Thus there are three rates – low (actually zero) for narrow bandwidth, medium (large bandwidth, approved application), and high (large bandwidth, non-approved application). Rollins mentions only two rates – a basic rate for using the approved bandwidth, and a surcharge rate for exceeding it. The disclosed Rollins rates take no account of what application is being used, as is now more clearly required by the present claims.

In paragraph 25(a) of the Office Action the Examiner asserts that the present claims do not specify the feature that the billing process is only applied for high bandwidth use. However, the final integer of independent claim 57 clearly requires that "the billing process is only applied to connections made at higher bandwidths." In addition, independent claim 48 requires that the "billing process is applied to connections established at the higher bandwidth but not at the first bandwidth.

In any event, since Rollins does not teach or suggested the above described claim limitations independent claims 48 and 57, and their respective dependent claims, patentably define over Rollins. More particularly, Rollins does not teach or suggest an input which identifies or discriminates between the platforms accessed by a given user, only the bandwidth the user requests.


It should also be clear that Kitze does not solve the deficiencies noted above with respect to Rollins since Kitze has merely been cited by the Examiner for disclosing that the application server is a peer-to-peer file transfer controller.

Therefore, in view of the above amendments and remarks, it is respectfully requested that the application be reconsidered and that all of claims 48-65, standing in the application, be allowed and that the case be passed to issue. If there are any other issues remaining which the Examiner believes could be resolved through either a supplemental response or an Examiner's amendment, the Examiner is respectfully requested to contact the undersigned at the local telephone exchange indicated below.

Respectfully submitted,

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